PUBLIC DOCUMENT

CITIC Trading Company, Ltd. v. United States of America and ABC Coke, et al.
Court No. 01-00901
Slip Op. 03-23 (CIT March 4, 2003)

FINAL RESULTS
PURSUANT TO REMAND

SUMMARY AND BACKGROUND

The Department of Commerce ("Department") has prepared these final results pursuant to the remand order from the United States Court of International Trade ("CIT") in CITIC Trading Company Ltd. v. United States of America and ABC Coke, et al., Crt. No. 01-00901, Slip Op. 03-23 (CIT March 4, 2003) ("CITIC Trading Co.").

First, in accordance with the CIT's instructions, we have re-examined the remanded issues of the Final Determination. See Final Determination of Sales at Less Than Fair Value: Foundry Coke Products From The People's Republic of China, 66 FR 39487 (July 31, 2001) ("Final Determination") and accompanying Issues and Decision Memorandum ("Decision Memo"). Specifically, we have (1) clarified our choice of surrogate value for coking coal; (2) explained our reasoning behind finding that foreign producers reported coal usage amounts subsequent to washing; (3) revised our use of adverse inferences based on non-cooperation by producers shut-down by the People's Republic of China ("PRC") government; (4) explained our reasoning behind not using surrogate values from related coal

mines; and (5) explained our interpretation of the scope language for Sinochem.

On July 31, 2001, the Department published its Final Determination, covering the period of investigation ("POI"), January 1, 2000, through June 30, 2000. This investigation involved ABC Coke, Citizens Gas & Coke Utility, Erie Coke Corporation, Sloss Industries Corporation, and Tonawanda Coke Corporation (collectively "Petitioners"), and CITIC Trading Co., Ltd. et al. ("Respondents"). Respondents contested various aspects of the Final Determination.

On March 4, 2003, the Court issued its opinion with regard to the issues raised by Respondents. In its decision, the Court remanded to the Department five aspects of the Final Determination for reconsideration: (1) with respect to the Department's use of the surrogate value for coking coal, the Court ordered the Department to resolve its internal inconsistencies and select surrogate values that are sufficiently contemporaneous and consistent with the objectives of 19 U.S.C. §1677b©); (2) with respect to the Department's finding that foreign producers reported coal usage amounts subsequent to washing, the Court ordered the Department to either make an adjustment reflecting its use of unwashed coal amounts, or provide a reasonable explanation and substantial evidence for its finding on washed coal inputs; (3) with respect to Department's use of adverse inferences based on non-cooperation by producers, the Court ordered the Department to include Respondents' list submission in the record and use non-adverse facts available to determine the normal values for shut-down producers; (4) concerning the Department's refusal to use surrogate values from related coal mines, the Court ordered the Department to properly determine whether it was appropriate to apply a factors of production methodology to the coal produced by the related coal mines; and (5) the Court found that the Department's interpretation of the scope language was contradictory and

ordered the Department to either provide reasoning for its interpretation of the scope language or resort to its previous interpretation of the language, consistent with prior practice.

On May 15, 2003, the Department released its draft final results pursuant to the CIT's remand order ("Draft Results") to the moving Respondents CITIC Trading Co., Ltd. ("CITIC"), Sinochem International Co., Ltd. ("Sinochem"), and Minmetals Townlord Technology Co., Ltd. ("Minmetals"), and to Petitioners. On May 21, 2003, the Department received comments on the Draft Results from Petitioners and Respondents. On May 23, 2003, the Department received rebuttal comments on the Draft Results from Petitioners. The Department has addressed Petitioners' and Respondents' comments below.

If the CIT approves these remand results, the weighted-average antidumping margin for CITIC will be 47.62% and the weighted-average antidumping margin for Sinochem will be 103.26%. The weighted-average antidumping margin for Minmetals did not require adjustment.

DISCUSSION

Issue 1: Coking Coal Surrogate Value

Summary

The Court instructed the Department to "resolve its internal inconsistencies" regarding (1) its selection of surrogate values that are "sufficiently contemporaneous" to the period of investigation, and (2) the Department's use of inflated values.

The Department has determined that the impression of 'inconsistencies' and questions relating to contemporaneity are both due to clerical errors by the Department. In its Final Decision

Memorandum, the Department inadvertently mislabeled the dates used to obtain the surrogate value for coking coal. In particular, the Department used Indian import statistics from April through September 2000, to calculate the surrogate value for coking coal. The Federal Register notice clearly stipulates the period used in several instances. However, confusion arose, in part, from the Department's inadvertent mislabeling of the time period in its Final Analysis Memoranda, where the Department used an updated time period from the Preliminary Determination, but continued to cite the previous time period in its Final Analysis Memoranda.[1] Moreover, the confusion continued because the Department failed to put on the record copies of pages from Indian import statistics that were used to calculate the surrogate value.

This clerical error caused inconsistencies on the record regarding the time period used for calculating the surrogate value. The Department has corrected the inconsistency with regard to the time period of data used to value coking coal and the dates on the record are now consistent.

In light of these ministerial errors, the Department reconsidered its determination on the use of Indian import statistics as a surrogate value for coking coal for the POI and found that no recalculation is necessary.[2] The Department finds that the surrogate value used in the Final Determination was, in

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[1] See Analysis for the Final Results of the Antidumping Duty Investigation of Foundry Coke from the People's Republic of China ("PRC"): Minmetals Townlord Technology, Ltd. ("Minmetals"), dated July 23, 2001; Analysis for the Final Determination of Foundry Coke from the People's Republic of China ("PRC"): Sinochem, dated July 23, 2001; Analysis for the Final Determination of Foundry Coke from the People's Republic of China ("PRC"): CITIC, dated July 23, 2001 (collectively "Final Analysis Memoranda").

[2] Because Shanxi Dajin is not party to this litigation, the Department is leaving all issues with respect to it undisturbed from the Analysis for the Final Determination of Foundry Coke from the People's Republic of China: Shanxi Dajin International (Group) Company ("Shanxi Dajin"), dated July 23, 2001; and Analysis for the Amended Final Determination of Foundry Coke from the People's

fact, sufficiently contemporaneous with the POI, consistent with the objectives of 19 U.S.C. §1677b©), and otherwise appropriate for valuing the coking coal used by Respondents.

Analysis

In its Final Analysis Memoranda for Respondents CITIC, Sinochem, and Minmetals, the Department used Monthly Statistics of the Foreign Trade of India from April through September 2000, to derive the surrogate value for coking coal, but inadvertently mislabeled the time period from which the surrogate value was derived. See Final Analysis Memoranda. The Department mistakenly stated in its Final Analysis Memoranda that Indian import statistics from April 1998 through May 1999, were used to calculate the surrogate value for coking coal of $45.54. See id. Comparing the data for both time periods evidences the clerical nature of this mistake: only the Indian import statistics from April though September 2000, yield $45.54.[3] Thus, only the dates on the Department's calculation sheets were mislabeled. The Department has corrected the mislabeled dates in its Analysis for the Draft Remand Results Memoranda to reflect the actual time period used (April through September 2000) and attached the source data from the Indian import statistics used by the Department to value the coking coal input.[4]

Republic of China: Shanxi Dajin International (Group) Company ("Shanxi Dajin"), dated August 24, 2001.

[3] We calculated $45.54 by dividing the total value of Imports to India (after deducting imports from the nonmarket economies, the PRC and Russia) by the total quantity of Imports to India. We then converted the figure into U.S. dollars using the conversion rate of 0.02278 Indian Rupees per U.S. Dollar.

[4] See Analysis for the Draft Remand Results of Foundry Coke from the People's Republic of China ("PRC"): Minmetals Townlord Technology, Ltd. ("Minmetals"), dated May 14, 2003; Analysis

The inconsistent references to inflated and uninflated surrogate values are also attributable to clerical mistakes. In the text of the Final Analysis Memoranda, the Department erroneously referred to an inflated surrogate value of $59.82, however, in Attachment I to the Final Analysis Memoranda, which shows calculations deriving $45.54, an uninflated surrogate value for coking coal of $45.54 is clearly listed. See Final Analysis Memoranda. Since the surrogate value for coking coal overlaps with the POI, there is no need to inflate the surrogate value; we will use the uninflated value of $45.54 and will correct the Final Analysis Memoranda to reflect the uninflated value.

The Department relied on Indian import statistics, which it determined to be the best information available, to value coking coal in its Final Determination. The Indian import statistics have been used in a number of antidumping investigations and reviews of the PRC, demonstrating their reliability and appropriateness as surrogate values. Furthermore, India was selected as the primary surrogate country because (1) India is at a level of economic development comparable to the PRC, and (2) of the countries at a level of economic development comparable to the PRC, India is the largest producer of foundry coke, the subject merchandise. See Surrogate Country Selection Memorandum to The File from James Doyle, Program Manager, dated February 27, 2001 ("Surrogate Country Memorandum").

Additionally, we find the surrogate value for coking coal derived from the Indian import statistics to be more appropriate than the coking coal values listed in Coal Week International,

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for the Draft Remand Results of Foundry Coke from the People's Republic of China ("PRC"): Sinochem, dated May 14, 2003; and Analysis for the Draft Remand Results of Foundry Coke from the People's Republic of China ("PRC"): CITIC, dated May 14, 2003 (collectively "Analysis for the Draft Remand Results Memoranda").

provided by Respondents. See Respondents' Additional Surrogate Comments. Respondents asked the Department to derive coking coal prices from a basket of countries listed in Coal Week International: South Africa, Indonesia, Colombia, Venezuela, and Poland. Using an average coking coal value from this basket of countries is inappropriate because the Department cannot determine if the value is from a country at a level of economic development comparable to the PRC. Additionally, while there is a value for coking coal from Indonesia, one of the countries considered by the Department to be at a level of economic development comparable to the PRC, there is no evidence on the record that Indonesia is a significant producer of foundry coke. See Memorandum from Jim Doyle, Program Manager, to Edward C. Yang, Office Director: Selection of a Surrogate Country, at page 2 (February 20, 2001). Therefore, Indonesia does not meet one of the two statutory criteria of an appropriate surrogate country. Moreover, we have a reliable and publicly available value from India, our primary surrogate country in this investigation, and the values are sufficiently contemporaneous because they overlap with half of the POI. While the Department has in other cases used surrogate values from an alternative country if value inputs from the first choice surrogate are (1) unavailable, (2) not sufficiently contemporaneous, (3) of poor quality, and (4) otherwise unreliable, in this investigation it is not appropriate since Respondents provided no evidence that the Indian import statistics for coking coal are unreliable and aberrational, nor that they represent a different quality of coking coal than that used by Respondents.

In addition, the coking coal price from the Indian producer, Bharat Coking Coal, is also inappropriate. We stated in our Preliminary Determination that the coking coal value provided by Respondents "was for a significantly lower quality of coking coal than that which is actually used by

foundry coke producers." See Notice of Preliminary Determination of Sales at Less Than Fair Value: Foundry Coke from the People's Republic of China, 66 FR 13885, 13890 (March 8, 2001) ("Preliminary Determination"). Respondents have agreed with this determination. See Respondents' May 1, 2001, submission, at page 5. Therefore, the Indian import statistics continue to be the most appropriate source for valuing coking coal in the PRC.

The Department relied on a surrogate value for coking coal that was also sufficiently contemporaneous with the POI. The Department applied surrogate values from the period, April through September 2000, which does not vary substantially from the POI, January 1, 2000 through June 30, 2000, and, in fact, overlaps with the POI exactly by three months (April, May, and June 2000) and follows the POI by three consecutive months (July, August and September 2000). The Tariff Act of 1930, as amended (the "Act") does not indicate the time periods from which surrogate values must be taken, nor does it require that the time periods to be exactly contemporaneous. See Section 773(c)(4). However, the Department's practice is to use surrogate values from a period contemporaneous, or a period as closely contemporaneous as possible, with the POI.

The Department exercised reasonable care in finding a surrogate value for coking coal that is appropriate to the coal used by Respondents, publicly available, reliable, and contemporaneous. In the Preliminary Determination, the Department used Indian import statistics from 1998, through 1999, which were subsequently updated for the Final Determination when more contemporaneous data from April through September 2000 was available. Although the surrogate value for coking coal is not perfectly contemporaneous with the POI, the Indian import statistics for April through September 2000 were the most recent and appropriate information readily available to the Department.

Issue 2: Washed Coal Inputs

Summary

We have reconsidered our determination that the foreign producers reported coal usage amounts subsequent to washing, and found that no recalculation is necessary. The Department continues to find substantial evidence in the record that the reported coal usage amount represents washed coal and was therefore properly valued in the Department's normal value calculation.

Analysis

In our Final Determination, we determined that Respondents reported coking coal inputs at stages subsequent to washing. See Decision Memo, at Comment 2. In the CIT remand order, the Court ordered the Department to articulate the basis for its final determination that the Respondents reported the volume of washed coal, rather than unwashed coal for its factors of production. The Court did so because while in the Decision Memo, the Department stated that "{It} is evident from Respondents' questionnaire responses, and we further confirmed at verification, that Respondents reported coking coal input quantities at the stage subsequent to coal washing," the Decision Memo did not clearly articulate the bases of this determination. See id.

The Department's conclusion was based on substantial evidence obtained during the verification of the foreign producers. The Department's Beizhang Verification Report states that "Beizhang officials stated that {some coal} is lost during the coal washing or coke making process." See Memorandum from Alex Villanueva, Import Compliance Specialist, to James C. Doyle, Program

Manager for the Verification of the Response of Wenshui County Beizhang Xianghe Coking Co., Ltd, ("Beizhang") with Regard to the Production of Foundry Coke, at page 7 (May 24, 2001) ("Beizhang Verification Report"). At verification, we confirmed the amount of coal purchased by Beizhang and the amount of coal consumed by Beizhang during the POI. See Beizhang Verification Report, at Exhibit B-11, and verified that the difference between the amount purchased and the amount consumed is the same quantity of coal lost during the coal washing or coke making process. See Beizhang Verification Report, at page 7 and Exhibit B-11. This post-washing figure listed as "consumed" is then listed on Beizhang's factor utilization sheet as the amount of coal used to make the POI's production quantity of coke. See Beizhang's January 16, 2001, Section D response, at Exhibit 4. Thus, since Beizhang reported its coal usage amount based on the amount of coal consumed by Beizhang, which included documents demonstrating the quantity of coal lost during the coal washing or coke making process, the Department correctly determined that Beizhang reported its coal usage amount subsequent to washing. See id.[5]

Similarly, at the verification of Taiyuan Genyang Industrial Company, Ltd. ("TG"), the verification exhibits show that TG also reported coal usage amounts subsequent to washing. In the TG Verification Report, at Exhibit TG-5, the "Raw Materials Inventory Worksheet for the Company," lists quantities of coal withdrawn from inventory and a quantity of coal mud withdrawn from inventory for June. See Memorandum from Alex Villanueva, Import Compliance Specialist, to James C. Doyle, Program Manager for the Verification of the Response of Taiyuan Genyang Industrial Company, Ltd.

[5] The coal consumption quantity listed in Exhibit B-11, "Summary of Coal Input," is identical to the coal consumption quantity listed in the"Inputs and Output Table" of Beizhang's January 16, 2001, Section D response, at Exhibit 4.

("TG") with Regard to the Production of Foundry Coke, Exhibit TG-5 (May 24, 2001) ("TG Verification Report"). According to TG's January 16, 2001, Section D questionnaire response, TG's reported usage amount of coal for June is equal to the sum of all quantities of coal withdrawn from inventory for June after deducting the quantity of coal mud withdrawn from inventory for June. See TG's January 16, 2001, Section D questionnaire response, at Exhibit 4. Coal mud is a byproduct of the coal washing stage. Thus, TG reported an amount of coal usage subsequent to washing, since it subtracted the amount of coal mud from its coal usage amount.

The Department has conducted a thorough review of the record of this proceeding and found substantial data on the record that indicates that the Chinese producers reported coal subsequent to washing as discussed above. Of the three producers that the Department verified, the evidence clearly shows that two of the producers reported coal subsequent to washing. While there is no similarly clear information for the other foreign producers, the record shows that all the Respondents used identical methods in reporting their coal usage amounts to the Department according to their Section D responses and supplemental responses, using "Input and Output Tables" which show the actual inputs for each month during the POI. Furthermore, Respondents have provided no evidence to substantiate their claim that the foreign producers reported coal usage amounts prior to the coal washing stage of the production process. In antidumping proceedings, Respondents "have the burden of creating an adequate record to assist Commerce's determinations."[6] Therefore, since two of the foreign producers verified by the Department reported coal usage amounts subsequent to washing, and given the

[6] See NSK Ltd. V. United States, 919 F. Supp. 442, 449 (CIT 1996); Tianjin Machinery Import & Export Corp. V. United States, 806 F. Supp. 1008, 1015 (CIT 1992). See also Mannesmannrohren-Werke v. United States, 120 F. Supp. 2d 1075, 1087 (CIT 2000).

extremely similar production processes reported by the coke producers, and the identical reporting forms filled in by the coke producers, the Department acted reasonably and based on substantial evidence when it inferred that all of the foreign producers reported coal usage amounts subsequent to washing.

We also find that petitioners' assertion that the coal washing process results in losses as high as 40 to 50 percent as impurities in the coal are washed away does not reflect the foreign producers' actual losses for coal washing. See U-Met of PA, Inc. Case Brief, at 3-4 (June 12, 2001). Petitioners' assertion was an unsupported assertion for which no factual basis was presented, and is directly contradicted by the actual, verified information on the agency record. Beizhang's and TG's reported amount of coal lost during the POI to the coal washing or the coke making process is a verified amount, supported by these companies' production records.

Issue 3: Non-cooperation of Producers Shut-down

Summary

As instructed by the Court, we have accepted a list provided by Respondents on behalf of th PRC government of shut-down foundry coke producers (the "Conclusion Report"), reconsidered our determination on the use of adverse facts available for the non-cooperation of producers shut-down by orders of the PRC government, and found that a recalculation is necessary for certain suppliers of foundry coke. Because the Conclusion Report fails to demonstrate that all of the Respondents' non-responding suppliers were shut-down for environmental reasons, we find that it is only appropriate to use non-adverse inferences for those producers named on the list (1) to the extent that these correlate

to the companies that supplied CITIC, Minmetals, and Sinochem, or (2) who submitted documentation on the record substantiating their claims. As a non-adverse finding, we will use a weighted-average of the calculated normal values for each exporter. We will continue to use adverse inferences for non-cooperating producers not proven to be identified in the Conclusion Report or who failed to submit documentation of their shut-down.

Analysis

The Department will apply non-adverse facts available to those suppliers who are listed in the Conclusion Report, or for whom the Respondents supplied other specific documentation of their shut-down. The Department continues to find that Sinochem did not cooperate fully in providing Section D questionnaire responses from its suppliers or providing the Department with evidence that its certain suppliers were shut-down because there is no evidence on record to: (1) prove that certain suppliers were shut-down, or (2) evince that Sinochem acted to the best of its ability to provide the Department with additional information about its suppliers. Thus the Department's application of adverse facts is appropriate for certain of Sinochem's suppliers.

Section 776(a)(2) of the Act provides that if an interested party or any other person: (1) withholds information that has been requested by the administering authority; (2) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections ©)(1) and (e) of section 782; (3) significantly impedes a proceeding under this title; or (4) provides such information but the information cannot be verified as provided in section 782(I), the Department shall, subject to section 782(d) and (e) of the Act, use the facts otherwise

available in reaching the applicable determination.

CITIC provided a letter from one non-responsive producer confirming its non-cooperation because it no longer produced foundry coke. Therefore, we applied non-adverse inferences. Since CITIC had no other non-responsive producers, we did not use adverse facts available to value any of its suppliers' normal values.[7]

For Sinochem, on April 1, 2003, the Department requested that Respondents provide the list of producers who were shut-down by the PRC government and which the Department had rejected during verification. On April 22, 3003, the Department received the PRC Conclusion Report list of producers from the Respondents. On April 22, 2003, the Department requested further clarification from Respondents of the Conclusion Report. On April 29, 2003, the Department received a response from Respondents in reference to the Conclusion Report. For Sinochem's suppliers who submitted letters confirming that they are no longer producers of foundry coke or who were named in the PRC Conclusion Report, the Department used non-adverse inferences. For certain other suppliers to Sinochem, where no documentation exists to corroborate their shut-down, the Department's application of adverse inferences is appropriate.

As non-adverse facts available, the Department used a weighted-average normal value calculated from the responsive producers for each exporter for those producers who submitted letters confirming they are no longer producers of foundry coke or were listed in the Conclusion Report. The

[7] Minmetals had only one supplier, who also participated in the Department's investigation, and thus, Minmetals' normal value from the Final Determination represents a fully calculated normal value without adverse inferences.

Department then used the adjusted normal value to calculate a new weighted-average dumping margin for CITIC and Sinochem. The Department did not alter its normal value calculations for the non-responsive suppliers who were not contained on the list and provided no documentation confirming they were shut-down.

Section 776(b) of the Act provides that, in selecting from among the facts available, the Department may employ adverse inferences when an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information. Accordingly, the Department used facts available for Sinochem and certain of its suppliers because they failed to act to the best of their ability in providing material documents that the Department repeatedly requested during the investigation.

First, the administrative record demonstrates that Sinochem did not cooperate by acting to the best of its ability to persuade all of its suppliers to provide their Section D questionnaire responses or documentation corroborating their shut-down, as requested by the Department.

The Department requested Sinochem to provide Section D questionnaire responses for all suppliers in its: original November 7, 2000, questionnaire; December 13, 2000, ex-parte memorandum; January 23, 2001, letter; and January 26, 2001, ex-parte memorandum. The Department also requested that Sinochem explain and document its efforts to obtain these responses and submit supporting documentation in its January 26, and February 28, 2001, supplemental questionnaires, confirming each supplier was shut-down. Starting with its initial Section D submissions of January 16, 2001, Sinochem failed to provide Section D questionnaire responses for all of its suppliers.

Sinochem also failed to give any indication that it would not provide Section D questionnaire responses for all of its suppliers until January 26, 2001, nearly three months after receiving the original

November 7, 2000, Sections A, C, and D questionnaires, and two months after Sinochem first identified its suppliers in its November 28, 2000, quantity and value submission, and despite two face-to-face meetings with Department staff during which the requirement to report all suppliers was mentioned.[8] Moreover, Sinochem gave no indication that it was experiencing non-cooperation by its suppliers until January 26, 2001, at a face-to-face meeting with Department officials, and in writing on January 30, 2001. See Respondents' January 30, 2001, letter. Rather, on January 5, 2001, Sinochem informed the Department that it asked its suppliers to provide information on the general overview of their production in their Section D responses and that it would be submitting the Department's requested sample documentation from one of the non-responding suppliers upon receipt of the information. See Sinochem's January 5, 2001, supplemental questionnaire response. Additionally, on January 5, 2001, Respondents requested an extension of time for submitting Section D questionnaire responses, but nowhere stated that it would not be submitting responses for all of its suppliers. See Respondents' January 5, 2001, extension request. The Department granted Respondents an extension until January 16, 2001, for Section D questionnaire responses. On January 10, 2001, Sinochem again said it would be submitting this information from one of the non-responding suppliers upon receipt of the information. See Sinochem's January 10, 2001, submission. On January 16, 2001, Respondents requested another extension of time for submitting Section D questionnaire responses, in order to file responses for the remaining individual producers who supplied foundry coke (responses for seven individual producers were submitted); again, nowhere stating that it would not be submitting

[8] See Memorandum from Alex Villanueva, Case Analyst to the File: Ex-parte memorandum on Foundry Coke from China (December 13, 2001); Memorandum from Alex Villanueva, Case Analyst to the File: Ex-parte memorandum on Foundry Coke from China (January 26, 2001); and the Department's January 26, 2001, supplemental questionnaire.

responses for all of its suppliers and also implying that all remaining producers' data would be provided. See Respondents' January 16, 2001, extension request. The Department granted Respondents the full extension. On January 19, 2001, the Department notified Respondents that any missing Section A exhibits, including Sinochem's information from one of the non-responding suppliers, may be subject to application of adverse facts available if not received by the specified deadline. See January 19, 2001, letter. The Department did not receive a response from Sinochem.

The record evidence strongly suggests that Sinochem could have provided Section D questionnaire responses or documentation confirming the non-responsive producers were shut-down in a timely manner had it chosen to do so. We believe that it was within Sinochem's ability to provide Section D questionnaire responses for some suppliers whose foundry coke facilities were shut-down for environmental reasons. The record demonstrates that at least one supplier continued to operate its facility after its foundry coke production was halted. See Sinochem's February 8, 2001, supplemental questionnaire response, exhibit 5. Since Sinochem provided a letter from a certain supplier certifying its termination of foundry coke production, it could have obtained similar documentation from any of its other non-responsive suppliers. See id. Indeed, as Sinochem's March 9, 2001, submission demonstrates, one of the non-responding suppliers remained open after its foundry coke production stopped. Thus, if one entity who was shut-down provided its factors of production, it is reasonable to infer that others could have done the same. See Sinochem's January 16, 2001, Section D Questionnaire Response.

Second, as the record demonstrates, the Department offered Sinochem several opportunities to prove that its suppliers were shut-down but Sinochem failed to provide the Department with

documentation corroborating the shut-down of its suppliers. Once the Department was aware that Sinochem would not provide Section D questionnaire responses for its non-responding producers, the Department asked for supporting documentation corroborating that each producer was in fact shut-down. See January 26, 2001, supplemental questionnaire. The Department even suggested potential sources of support. First, on January 26, 2001, the Department requested that Sinochem provide evidence demonstrating that its suppliers were shut-down, including: "documentation notifying buyers of the company closure; layoff notices as result of the company closure, etc." See January 26, 2001, supplemental questionnaire. Sinochem provided no documentation demonstrating the shut-down of specific suppliers. Additionally, the Department requested a copy of the notification to the government of the company closure, which it did not receive. The Department also asked for dates of the company shut-down and the nature of the shut-down, and a detailed explanation why Sinochem could not provide Section D responses from certain companies that were shut-down but could provide a response for a certain supplier that was shut-down. See id. However, the Department ultimately received only a general date of wide-scale government shut-downs and an explanation that its alleged shut-down suppliers were unresponsive because they were unaffiliated. See Sinochem's February 8, 2001, submission.

Third, Sinochem did not inform the Department in a timely manner that its non-responsive suppliers were shut-down. It was not until January 30, 2001, in Sinochem's letter to the Department, when Sinochem stated that "{t}he remaining manufacturers, being unrelated to the exporters, having supplied relatively small quantities to the exporters, and having been shut-down subsequently by the Chinese government for noncompliance with environmental standards, have provided no assistance thus

far to the exporters despite the exporters' best persuasive efforts." See Respondents' January 30, 2001, letter. This is the first instance on record that Sinochem expressly claimed that its suppliers were shut-down, and the assertion came three months after the Department's initial request for information about Sinochem's suppliers, in its original November 7, 2000, questionnaire.[9]

The record, on the other hand, clearly shows that Sinochem had knowledge of its suppliers' shut-down, but failed to notify the Department of this shut-down for three months. On February 8, 2001, Sinochem provided the Department with notices from the Qingxu County government (dated May 31, 2000) and from Shanxi Province government (undated) indicating a wide-scale shut-down of companies who failed to meet new environmental regulations. See Sinochem's February 8, 2001, supplemental questionnaire. These government notices did not identify any supplier by name, and therefore did not substantiate the alleged shut-down of any specific supplier. See id. Moreover, according to the government notices, these producers were to be shut-down by June 5, 2000, an indication that Sinochem had knowledge of the government notices prior to January 30, 2001, when Sinochem first notified the Department that it would not be submitting Section D questionnaire responses for purportedly shut-down producers. Since the Department asked Sinochem to provide information about its suppliers in its November 7, 2000, questionnaire, Sinochem could have notified the Department about its suppliers' shut-downs well before its January 30, 2001, submission, but failed to provide such notice.

On February 28, 2001, the Department again asked Sinochem to provide supporting

[9] In addition, the Department placed an ex-parte memorandum on the record referencing Respondents' non-responsive suppliers. See January 26, 2001, ex-parte memorandum.

documentation to substantiate the shut-down of its suppliers and to "describe what measures were taken to verify that these suppliers were shut-down." See February 28, 2001, supplemental questionnaire. On March 9, 2001, Sinochem replied that "{t}here exists no documentation regarding plant shut-down other than the government notices which Sinochem has submitted to the Department; the government did not issue a company-specific notice." See Sinochem's February 28, 2001, supplemental questionnaire response. Sinochem also stated that it tried to the best of its abilities to persuade the other producers who have been shut-down to cooperate, including visiting and speaking to their top-level management, but they declined to respond. See id.

Fourth, despite repeated requests by the Department, Sinochem also failed to provide the telephone numbers, facsimile numbers and addresses for its suppliers. See November 7, 2000, questionnaire, December 20, 2000, supplemental questionnaire, and January 26, 2001, questionnaire. In order to establish information about Sinochem's suppliers, the Department repeatedly asked Sinochem for the telephone numbers, facsimile numbers, and addresses of its suppliers. First, as part of its Section A questionnaire, the Department asked Sinochem for the addresses and facsimile numbers of it suppliers. Sinochem failed to provide this information. See November 7, 2001, Section A questionnaire. Then, in its supplemental Section A questionnaire, the Department again requested that Sinochem provide "all those companies which {Sinochem had} identified as supplying Sinochem with the merchandise under investigation." See December 20, 2000, Section A supplemental questionnaire. Once again, in the Department's second supplemental Section A questionnaire, the Department asked Sinochem to provide the "exact address and fax numbers" of its supplier companies. See January 26, 2001, second supplemental Section A questionnaire. The Department never received the telephone

numbers, facsimile numbers, nor addresses of Sinochem's suppliers, despite the fact that Sinochem stated in its second supplemental Section C & D questionnaire response that it visited and spoke to the top-level management of its supplier companies to attempt to compel the company managers to respond. See Sinochem's March 9, 2001, submission. Thus, the record reflects that Sinochem did at the very least have the addresses of its suppliers but failed to provide the Department with this information.

Therefore, based on the substantial evidence on the record, the Department finds that Sinochem failed to cooperate to the best of its ability in this investigation when it failed to provide the factors of production for those companies not listed in the Conclusion Report, or provide any evidence that corroborates that these suppliers were shut-down.

The factors of production information that Sinochem failed to provide from its suppliers was highly relevant to the Department's fundamental dumping margin calculation. The amount of foundry coke supplied by the producers at issue represents a significant portion of Sinochem's total foundry coke quantity. The Department requests factors of production data in order to calculate normal values and a dumping margin. Without such information, the Department cannot accurately calculate a dumping margin. As a result of the failure of Sinochem to provide the factors of production for its producers, the Department was unable to calculate complete normal values which it uses to calculate the margin for the exporter. Sinochem's failure to respond to the Department's repeated requests for the factors of production data of its suppliers or documentation on the shut-down of the non-responding producers, therefore, hindered the Department's ability to calculate an accurate margin for Sinochem. Moreover, the company's failure was unreasonable. Sinochem has not alleged that its failure to submit

the missing sales data was due to inadvertence or clerical error, and the submission of a letter from a certain producer demonstrates that Sinochem was capable of inducing its suppliers to comply with the Department's requests for information had it desired to do so.

While in the Final Determination we applied adverse inferences to all of Sinochem's suppliers who failed to provide their factors of production, we are now revising our finding, to apply adverse inferences only to those suppliers who failed to document their shut-down. Sinochem provided a letter from one non-responsive producer confirming that it no longer produced foundry coke, and for that company we applied non-adverse inferences. The Conclusion Report also indicates the shut-down of certain other suppliers to Sinochem. We, therefore, applied non-adverse inferences to the quantity supplied by the producer who provided a letter confirming its shut-down and the producers who were referenced in the Conclusion Report. We continued to apply the highest normal value to the quantity supplied by non-responding producers, for whom Sinochem has provided no company-specific documentation that they were shut-down.

CITIC provided a letter from a certain supplier stating that it no longer produced foundry coke on February 13, 2001. See CITIC's February 13, 2001, submission. CITIC's other suppliers were all responsive in providing the requested factors of production data to the Department. Therefore, we applied non-adverse inferences. In order to apply non-adverse inferences, we used a weighted-average of the responding producers' normal values for Sinochem and CITIC and applied that normal value to the quantity supplied by the producers who provided letters confirming their shut-down.

Issue 4: Related Coal Mines

Summary

We have reconsidered our determination on the use of surrogate values for coal produced in allegedly related coal mines and found that no recalculation is necessary. Valuing inputs which go into mining coal would be inconsistent with the Department's practice.

Analysis

At the outset, we note that, in Polyvinyl Alcohol from the PRC, the Department determined that it would not use the factors of production of a joint venture, which produced an input, because it is a separate legal entity.[10] In this case, the coal supplier is a distinct legal entity and does not produce foundry coke, therefore, following the precedent exhibited in Polyvinyl Alcohol from the PRC, we would not use the coal mine's factors for producing coal. Moreover, Polyvinyl Alcohol from the PRC reflects the Department's practice that it does not go beyond the producer of the subject merchandise to pick up inputs that a supplier uses to produce one of the producer's inputs.

Moreover, in the Final Determination the Department used Gujarat NRE Coke Ltd.

[10] See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Polyvinyl Alcohol From the People's Republic of China, 68 FR 13674, 13679 (March 20, 2003) ("Polyvinyl Alcohol from the PRC"). Also, see Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Ferrovanadium from the People's Republic of China, 67 FR 45088, 45092 (July 8, 2002) (where the Department determined it was not appropriate to use the factors of production from one of Pangang's companies because it produced an input and not subject merchandise).

("Gujarat"), an Indian producer of subject merchandise, to value the surrogate financial ratios.[11] There is no indication on the record that Gujarat self-produces coal, and correspondingly, possesses, operates and maintains the capital plant required to produce it. Thus, Gujarat does not incur expenses related to the operation, maintenance, and depreciation of the capital plant required to produce coal. For this reason, this expense is not reflected in Gujarat's financial ratios used by the Department in the Final Determination. If the Department were to use Gujarat's financial ratios, while valuing the inputs which go into producing coal, this would result in an improper undervaluation of the coal input, and understatement of normal value. Similarly, in Wire Rod from Ukraine, we found that the surrogate company did not maintain the capital plant required to manufacture iron ore, electricity, argon, nitrogen, and oxygen, nor did it incur expenses related to their operation, maintenance, and depreciation of the capital plant required to manufacture them. See Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod from Ukraine, 67 FR 55785 (August 30, 2002) ("Wire Rod from Ukraine") and accompanying Issues and Decision Memorandum, at Comment 4. Therefore, the Department determined that using the surrogate company's financial ratios, while valuing the inputs which go into producing iron ore, electricity, argon, nitrogen, and oxygen, would result in an "improper undervaluation of the inputs, and understatement of normal value." See id.

While there is a financial statement for Coal India, Ltd., a producer of coal in India, on the record of this investigation, it is not a producer of foundry coke. Since there are no financial statements on the record from an integrated producer of foundry coke who mines its own coal, if the Department

[11] The Department notes the choice of this company was unchallenged and the financial surrogate ratios are not subject to this remand.

were to use Coal India's data, we would understate the Respondents' normal value and therefore not meet the statute's requirement that the Department achieve results with the greatest degree of accuracy possible.

Moreover, as articulated in the Department's decision in Structural Steel Beams from the PRC, valuing the inputs that go into certain energy inputs would cause "needless complications to our (the Department's) calculation of NV and lead to potentially erroneous results." See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Structural Steel Beams From The People's Republic of China, 66 FR 67179, 67201 (December 28, 2001) ("Structural Steel Beams from the PRC"). The Department notes that valuing the inputs for mining coal could have the same effect in this case even if the Department were to assume, arguendo, that the coke producer in question was the producer of the coal, which it is not.

Issue 5: Scope

Summary

We have reconsidered our determination on the treatment of the portion of the Sinochem's straddling sale that exceeded the 100 mm scope criterion as a sale of subject merchandise to the United States, and found that no recalculation is necessary. The Department performed a margin analysis only on the portion of the straddling sale that exceeded the 100 mm scope limit. Because a portion of this sale falls within the scope, the portion sold as 100 mm or larger is appropriately considered subject merchandise.

Analysis

As explained in the Final Determination, we determined that all foundry coke sold as larger than 100 mm (4 inches) in maximum diameter is within the scope of the order, so long as the second condition is met: at least 50 percent of that foundry coke sold as larger than 100 mm is retained on a 100 mm sieve. Accordingly, while foundry coke that is sold as larger than 100 mm may start out as larger than 100 mm, the industry expects and understands that such foundry coke will suffer degradation from the effects of handling and transportation. As discussed in greater detail below, this is the industry standard: foundry coke is sold as larger than 100 mm, so long as at least 50 percent of the foundry coke sold as 100 mm is retained on a 100 mm sieve. Respondents even estimated that degradation of foundry coke averages 20-25 percent per shipment. See Foundry Coke from China, USITC Pub. 3449, Inv. No. 731-TA-891 (Final), I-2 (September 2001) ("ITC Final Determination").

Thus, as explained in our Scope Ruling on Foundry Coke: Shook and Dajin, we stated that applying the sieve test on foundry coke sold as larger than 100 mm is altogether logical, as it is probable that such foundry coke will not all be retained on a 100 mm sieve. See Memorandum from Edward C. Yang, Director, to Joseph A. Spetrini, Deputy Assistant Secretary: Final Scope Ruling on the Antidumping Duty Order on Foundry Coke from the People's Republic of China: Shook Group LLC and Dajin U.S. Trading, Inc., at page 9 (May 31, 2002) ("Scope Ruling on Foundry Coke: Shook and Dajin"). Application of this industry standard test is necessary to distinguish whether the coke continues to be defined as foundry coke (as opposed to industrial coke which is smaller than 100 mm) after the degradation which occurs. This is where the second condition of the scope comes into play. If such foundry coke sold as larger than 100 mm is to be considered foundry coke, there cannot

have been so much degradation that a majority of that coke is 100 mm or smaller. Accordingly, so long as at least half of that foundry coke remains larger than 100 mm (*i.e.* so long as fifty percent of the foundry coke sold as being over 100 mm is retained on a 100 mm sieve), the entire portion of the sale of foundry coke sold as over 100 mm qualifies as foundry coke within the scope of the order.

Thus, for the sale in question, given that the stated range of the sale was 75 mm to 125 mm, Sinochem sold a portion of the sale at or above 100mm in size, according to the contracted size range of the material. Of that total, 11.50 percent of the material was tested to be at or above 100 mm. While we do not know the specific amount contracted at or above 100 mm, we do know the amount tested at or above 100 mm. Therefore, the actual percentage of material tested at or above 100 mm represents the best information available and we will continue to apply this percent to the sale in question.[12]

The Department notes that its application of the scope of the proceeding and the Respondents' understanding of the proper functioning of the scope produce the same result for sales of foundry coke in which the entirety of the sale is sold as being above 100 mm. The only situation in which the Department's and the Respondents' understanding of the scope diverge is for sales whose size range straddles the key 100 mm size. The divergence arises because, only in these cases, the Department seeks to apply the test (whose purpose is to measure degradation) only to the portion of the sale sold

[12] We note that this interpretation of the scope is not a tautology, but incorporates a standard industry test to determine how much of the purportedly 100 mm and above foundry coke survived shipping and did not degrade below 100 mm. Clearly, once the test is performed and the mandatory percentage is recovered, no further testing would be necessary as to become a tautology. Additionally, it is necessary to use the actual percentage of foundry coke above 100 mm, because the data did not permit knowledge of how much foundry coke was sold as 100 mm to 125 mm.

as being above 100mm, while the Respondents would apply the test to the entirety of the sale[13], regardless of whether the sale contains merchandise which could not possibly be foundry coke by virtue of the sizing of the merchandise sold.[14]

Respondents' interpretation of the scope is therefore flawed. Specifically, the Department disagrees with the Respondents' proposed treatment of the denominator when performing the industry standard test. We clearly rejected Respondents' assertions that the denominator should be the volume of the entire shipment of mixed cokes, and not solely the foundry coke at or above 100 mm. See Decision Memo, at Comment 12. The Respondents' proposed scope tests how much of the material after being shipped is retained on the 100 mm sieve, as compared to how much was being sold as being 100 mm or above. We also note that the Department has consistently applied the "sold as" industry standard in this case, and will continue to do so. The sale in question is unique in that only a portion of the sale was being sold as 100 mm or above. Our treatment of this sale is therefore consistent with our general interpretation of the scope. For example, if a sale was contracted entirely above 100 mm, its falls within our scope so long as at least 50 percent did not degrade below 100 mm. While an amount

[13] Note that the Respondents refer consistently to a "shipment" as being the proper focus of the test. The Department disagrees with the test being applied to a shipment for two reasons. The first is that the Statute directs the Department to conduct its antidumping analyses on sales, and not on shipments. The second is that a shipment of merchandise may contain both subject and non-subject merchandise, and thus cannot focus precisely on subject merchandise.

[14] The Department recognizes that sales of coke sold in a range below 100 mm could possibly contain a small percentage of coke that is above 100 mm. The Department did not review any sales sized entirely below 100 mm in order to determine if there were any portions sized above 100 mm. This provides further evidence that the Respondents' characterization of the Department's departure from what the Respondents described as the "bright line test" is inaccurate, as well as serving to further underscore that the only instance in which the Department was not guided by size range of the sale was for those whose size ranges straddled the 100 mm size.

of foundry coke typically degrades, this amount was sold as 100 mm and above, thus the entire sale must be subject to review. Furthermore, if a sale was contracted entirely below 100 mm, it does not fall within our scope even if a small amount actually exceeds 100 mm. If the coke was sold as below 100 mm, it would not be subject to the order.

Furthermore, the sale in question is foundry coke, because a portion of the contracted amount was for coke sized 100 mm and above, and not industrial coke as alleged by Respondents. We note that the sales contract refers to this material as foundry coke. See Memorandum from Laurel LaCivita, Senior Import Compliance Specialist, and Marlene Hewitt, Import Compliance Specialist, to James Doyle, Program Manager for Sinochem International Company, Ltd.: United States Sales, Verification Report; Foundry Coke from the People's Republic of China ("PRC"), at Exhibit S-13 (June 4, 2001). Moreover, in Sinochem's February 8, 2001, supplemental questionnaire response, Sinochem states that it does "not produc{e} foundry coke less than 100 mm (4 inches), but some of the coke sold may fall below 100 mm due to deterioration during the loading and transportation process." See Sinochem's February 8, 2001, supplemental questionnaire response, at page 7. Thus, Sinochem is erroneously characterizing above 100 mm as industrial coke, while according to its responses and sales records, it correctly refers to coke above 100 mm as foundry coke. Therefore, we will continue to value the portion of the sale sold as 100 mm or above using the best information available, the test analysis report.

COMMENTS

Comment 1: Coking Coal Surrogate Value

Respondents' Argument: Respondents argue that the Indian import statistics used by the Department for valuing coking coal are unreliable and aberrational. Specifically, Respondents argue against: (a) the Department's use of Indian import statistics in other cases as support for their use in this case; (b) the Department's reliance on India as its primary surrogate country to obtain a surrogate value for coking coal; ©) the Department's refusal to use surrogate values from Coal Week International; and (d) the Department's finding that Indian import statistics are reliable and the best available source of surrogate value for coking coal.

A. Use of Indian Import Statistics in Other Investigations

Respondents state that the Department's reliance on Indian import statistics in this case, based on the Department's use of Indian import values in other cases, is not supported by substantial evidence. Additionally, Respondents contend that the use of Indian import values in other cases does not demonstrate their reliability and appropriateness as a surrogate value for coal in this case. Thus, Respondents argue that the Department must base its surrogate value selection on the record of this particular case.

B. The Choice of India as the Primary Surrogate Country

Respondents state that valuation of a factor input must be based on accurate and reliable information. Respondents argue that India is not designated as a primary surrogate for every input, and as such, the Department cannot solely rely on India's status as the primary surrogate to obtain a surrogate value for coking coal. Rather, the Department should analyze the quality of information for the country because the Department's practice is to reject surrogate values that are unreliable.

C. Coal Week International Prices

Respondents argue that values from Coal Week International reflect prices from countries at a comparable level of economic development to the PRC and are more reliable than Indian import values. Respondents contend that the Department's refusal to use surrogate values from the basket of countries in Coal Week International is based on the Department's misunderstanding of 19 U.S.C. § 1677b©)(4) and inconsistent with the Departments own practice.

Respondents explain that Indian import data does not meet the provisions of the statute requiring that surrogate values come from a country that is a significant producer of comparable merchandise and is a reliable value. Respondents cite to Rhodia v. United States, where they explain that the Court noted the Department's preference for domestic prices over imported prices as well as the overriding concern for accuracy. See Rhodia v. United States, Slip Op. 01-138 (CIT 2001). Respondents argue that Indian import data does not meet the criterion requiring that the surrogate country be a significant producer of comparable merchandise. Respondents state that the Indian import data is comprised of over 88 percent Australian imports. Respondents argue that because the data is not based on Indian domestic production of coking coal, and therefore is unrelated to the fact that India is at a comparable level of economic development with the PRC and has industries with comparable cost and pricing structures, Indian import statistics are not appropriate.

Next, Respondents argue that Indian import statistics are unreliable. Respondents argue the U.S. International Trade Commission's report on foundry coke, which was relied upon the by the Department, does not definitively establish India as a significant producer of coking coal. Respondents, however, acknowledge that the report does not indicate any other country in Respondents' basket of countries as a significant producer of coke either. Rather, Respondents contend that the report

suggests that other countries from Respondents' basket, such as South Africa and Poland, are just as likely as India to be significant producers of coking coal.

Respondents argue that they submitted evidence to show that all of the proposed countries in their basket were within the range of GDP for countries used as surrogates, and therefore should be used as possible surrogates. See Respondents' May 1, 2001, Surrogate Country Comments, at 7, and Exhibit 3. Respondents additionally suggest that because the Department conceded that Indonesia, a country on Respondents' list, was at a comparable level of economic development as the PRC, Indonesian coal prices could be used as an alternative.

Respondents also maintain that although the ITC report contains data about the specific quantity of coke produced in "other European" countries and "Africa," there is no mention of India's specific quantity production of coking coal, and the report only states that India has had capacity increases in production with no mention of whether that capacity is substantial. Respondents explain that despite inferences in the report that India (as well as South Africa and Poland) has substantial coking coal reserves, the Department refused to use internal coal prices in India because of quality differences. Respondents argue that evidence of India's coking coal reserves points to India as a substantial producer of coking coal just as similar evidence of Poland's and South Africa's coking coal reserves indicate that Poland and South Africa are substantial producers of coking coal. Respondents support this assertion with record evidence of coking coal reserves, which they claim indicates that African coking coal production is largely South African, non-EU European production is largely Polish, and "other Asian" production in largely Indian. Thus, Respondents conclude that the Department cannot only rely on data that establishes India as a substantial producer of coking coal and ignore data that

supports the use of Poland and South Africa as surrogates for coking coal.

D. Unreliability of Indian Import Statistics

First, Respondents argue that the Department cites no authority for imposing a burden on Respondents to explain why Indian import statistics are unreliable and to show that the quality of coking coal from India could not be the same as the quality of coal being used by Respondents.

Second, Respondents argue that the only information on the record to support a reasoned surrogate value determination is information from Coal Week International, since the Indian import values are unreliable and aberrational in nature. Respondents suggest that the Department recognized that the quality of coal is critical when it rejected prices from the only known Indian producer of coking coal, Bharat Coking Coal, because the coal was of a significantly lower quality of coking coal than that used by Respondents. Respondents argue that Coal Week International provides a better surrogate value than Indian imports because the quality of coal is specified, whereas the quality of coking coal is unknown in the Indian import statistics. Alternatively, Respondents assert that if quality is of no consequence, the Department should use domestic Indian coal prices form Bharat Coking Coal.

Additionally, Respondents argue that Indian import statistics are flawed because they are based not on Indian prices of coking coal, but on coking coal produced in countries not at a comparable level of development with the PRC, namely Australia, where 88.2 percent of the Indian import value and 88.5 percent of the Indian import quantities are from Australia. In support of this argument, Respondents note that Australia is an advanced industrial country, is at a higher level of development than the PRC, and is not on the list of comparable economies released by the Department. Additionally, Respondents state that the Department is unaware of the quality of Australian coking coal.

Respondents also argue that Indian import prices are not reflective of prices paid for coking coal in other parts of the world, as evidenced by the range of country-specific prices for coking coal averaging from $22.89 (imports from Indonesia) to $184.78 (imports from Bangladesh) per ton. Respondents argue that the price discrepancies are likely attributed to different qualities and different specialized types of coking coal. Moreover, Respondents contend that it is impossible that the price for a fungible commodity would vary so greatly from country to country. Lastly, Respondents argue that it is impossible to know which country produces coking coal that is comparable to Chinese coking coal.

Petitioners' Argument: Petitioners state that the Department's Draft Results complies with the Court's remand order with respect to the surrogate value for coal. Petitioners argue that Respondents's comments regarding the Department's use of Indian import statistics as a source of surrogate value are outside the scope of the remand order. Petitioners further argue that questions regarding the data inconsistencies and contemporaneity of the surrogate value, which the Court's remand order addressed, are unrelated to rejecting alternative data sources for valuation of coking coal. Therefore, Petitioners argue that the Department fully complied with the Court's remand order and it is unnecessary to inquire as to the merits of Respondents arguments regarding surrogate value selection.

Petitioners assert that the Department's use of Indian import statistics to calculate a surrogate value is supported by substantial evidence, as the Department articulated numerous, valid reasons for selecting Indian import statistics as a basis for its surrogate value calculation. Petitioners find Respondents' allegation, that the use of Indian import values in other cases is not legally relevant to this

case, is unpersuasive. Petitioners state that government import data are reliable and regularly used as the source of surrogate values because they are robust (encompassing imports from market countries wold-wide), well defined (covering products within established tariff classifications), prepared from governmental sources which do not have an interest in the results, and publicly available. In addition, Petitioners state that the use of Indian import statistics have been repeatedly accepted by the courts as a valid source of surrogate values, and this is in contrast to Respondents' values from Coal Week International, which is based on the "average of two spot price quotes from unidentified companies." See Decision Memo, at Comment 1.

Moreover, Petitioners state that Respondents' claim that Indian import statistics are unrepresentative of the prices in India, because 88 percent of the imports into India are from Australia, overlooks the salient aspect of the import data–that the data reflects prices charged for imports into India, not the country of origin. Petitioners finally state that the quality of coking coal submitted by Respondents was known to be different than that used by the PRC producers.

Department's Position: The Department agrees with Petitioners that it appropriately addressed the Court's questions relating to data 'inconsistencies' and the contemporaneity of surrogate value information in its Draft Results. The Department's determination to use Indian import values is supported by substantial evidence.

The Department's "authority to control, administer, and interpret the antidumping laws is universally recognized and customarily afforded substantial deference." Shandong Huarong General Corp. v. United States, 159 F.Supp.2d 714, 723-24 (CIT 2001). The relevant standard for selecting

surrogate values is outlined in 19 U.S.C. §1677b(c), which does not dictate how the Department should choose what constitutes the best available information for choosing its surrogate value. See id at 719. The statute leaves to the Department considerable discretion in developing its methodology for determining the best available information, so long as the Department acts consistently with the underlying objective of 19 U.S.C. §1677b©). See id. The standard of review precludes judgment on whether the surrogate value chosen by the Department was the absolute best available, but precedent clearly establishes that the Court may judge whether the Department's selection was reasonable. See Shandong, 159 F.Supp.2d at 720. The Department's reliance on Indian import statistics to obtain the surrogate value for the coking coal input was reasonable and consistent with the Department's statutory requirements of selecting surrogate values as articulated in 19 U.S.C. §1677b(c).

When merchandise is produced in a non-market economy, 19 U.S.C. § 1677b(c) provides that the valuation of the factors of production is based on the best information regarding the values of such factors in a market economy country or countries considered to be appropriate by the Department. See 19 U.S.C. § 1677b(c)(1). In valuing the factors of production, 19 U.S.C. § 1677b©)(4) provides that the Department "shall utilize, to the extent possible, the prices or costs of factors of production in one or more market economy countries that are—(A) at a level of economic development comparable to that of the nonmarket economy country, and (B) significant producers of comparable merchandise." Moreover, it is the Department's preference to use factor values solely from the primary surrogate country to value inputs. See Silicomanganese from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review, 65 FR 31514 (May 18, 2000) ("Silicomanganese from the PRC") and accompanying Issues and Decision Memorandum, at Comment 2. Additionally,

the Department's preference is to use surrogate values from publicly available sources. See Final Determination of Sales at Less than Fair Value: Cut-to-Length Carbon Steel Plate from the People's Republic of China,, 62 FR 61964, 61987 (November 20, 1997) ("CTL Plate from the PRC").

A. The Department Selected India as the Primary Surrogate Country.

The Department issued a memorandum identifying six countries as being at a level of economic development comparable to the PRC for the POI. See Surrogate Country Memorandum. The countries identified in the memorandum were India, Pakistan, Sri Lanka, Egypt, Indonesia, and the Philippines. See id. The Department selected India as the primary surrogate country because India is at a level of economic development comparable to the PRC, and India is a significant producer of comparable merchandise.[15] See 19 U.S.C. §1677b©)(4).

B. The Department Appropriately Selected Indian Import Statistics as the Source of the Surrogate Value for Coking Coal.

The Department relied on Indian import statistics for valuing coking coal because such data conforms to the Department's requirement that the surrogate value be from a source that is "publicly available, sufficiently contemporaneous, specific to the input in question, and sufficiently reliable." See Issues and Decision Memo, at Comment 1. Moreover, the Department's use of import statistics as surrogate values has been upheld by the courts. See, e.g. National Ford Chem. Co. v. United States, 166 F.3d 1373, 1376-79 (Fed. Cir. 1999); Shandong, 159 F.Supp.2d at 725; Taiyuan Heavy Mach.

[15] Respondents admit that based on the ITC Final Determination, India could be a significant producer of foundry coke. The USITC report states that "{for} a country to have a cokemaking industry, it must have significant reserves of coking coals, the main raw material in the production of all types of coke. In 1999, the United States had the world's largest recoverable reserves of coking coals, mainly different types of bituminous coal, followed by the Commonwealth of Independent States (CIS), India, and China." Foundry Coke from China, USITC Pub. 3449, Inv. No. 731-TA-891 (Final), 1-5 (September 2001) ("ITC Final Determination").

Import & Export Corp. v. United States, 23 CIT 701, 710 (1999) (upholding the use of Indian import data where India had domestic price controls on coal).

First, the Indian import statistics used by the Department to obtain the surrogate value for coking coal are sufficiently contemporaneous with the POI. Second, Indian import statistics are a publicly available source, whereas Respondents' values from Coal Week International are not. Third, the Indian import values used by the Department are for coking coal, the specific input in question. See Monthly Statistics of the Foreign Trade of India. Fourth, Indian import values for coking coal are sufficiently reliable. Finally, the use of Indian import values is consistent with the Department's preference to use surrogate values solely from the primary surrogate country. See Silicomanganese from the PRC, 65 FR 31574 and accompanying Issues and Decision Memorandum, at Comment 2.

1. The Indian Import Statistics are Sufficiently Contemporanous.

The POI in this case was April 2000 through September 2000. The Department used Indian import statistics from January 2000 through June 2000. Thus, there was an overlap of three months between these two time periods. The Department finds this overlap sufficiently contemporanous. Moreover, due to the overlap, there was no need for the Department to adjust for inflation.

2. Indian Import Statistics Are Publicly Available.

The Government of India publishes statistics concerning imports into the country. These statistics are therefore publicly available.

3. The Indian Import Values are Specific to the Input in Question.

The Department rejects Respondents' argument that its basket of countries from Coal Week International is a more accurate representation of the quality of coking coal used by Respondents than the Indian import statistics. Respondents argue that the basket of countries in Coal Week International represents a closer quality of coking coal produced by Respondents. According to the Coal Week International data for the POI, the ash content of coking coal, a significant factor in quality determinations, in the coking coal from Australia ranges from 7.0-10.0. This range is very close to the ash content of Chinese coking coal, which ranges from 8.0-10.0. Similarly, the ash content of coking coal in Coal Week International's basket of countries ranges from 7.0-10.0, with the exception of Indonesia, whose ash content falls far below this range at 4.0. Because Australian coking coal represents over 88 percent of India's imports of coking coal in value and volume, then over 88 percent of coking coal imports to India have an ash content range of 7.0-10.0, close to the ash content of Chinese coking coal. Moreover, the presence of Indonesian coking coal, which has a lower ash content than Chinese coking coal, in Respondents' proposed alternative demonstrates that the quality of the Coal Week International data differs from Chinese coking coal to a greater extent than Indian import statistics.

4. The Indian Import Values are Sufficiently Reliable.

It is the Department's practice to use factor prices that are broad market averages, in preference to less broad prices. See Notice of Final Determination of Sales at Less Than Fair Value: Silicon Metal From the Russian Federation, 68 FR 6885 (February 11, 2003) and accompanying Issues and Decision Memorandum, at Comment 1. Also, see CTL Plate from PRC, 62 FR at 61981

(November 20, 1997). The volume of the import data and the array of countries exporting this product to India demonstrates that this data represents a broad market average of the price for coking coal. The import prices are averages of all import transactions from multiple countries, which create a broad market average, and are thus a more reliable value than Respondents' suggested surrogate value from Coal Week International, which is based on the average of two spot price quotes from unidentified companies. Additionally, the Department agrees with Petitioners that Indian import statistics are reliable since such government-issued data are robust (encompassing imports from a range of countries world-wide), well defined (covering products within established tariff classifications), and prepared from governmental sources which do not have an interest in the results.

Furthermore, the Department disagrees with Respondents' contention that Indian import statistics are flawed because they are not based on domestic Indian prices of coal. Indian import statistics are considered close estimates of the domestic market prices for coking coal in India, as they reflect the prices paid domestically for that commodity. In fact, import prices may understate domestic prices because the former are reported on a duty-exclusive, tax-exclusive basis, while domestic prices are almost always not. See Shandong, 159 F.Supp.2d at 725. Thus, it is the Department's preference to use import prices over domestic prices. See id.

If, on the other hand, the Department were to accept Respondents' general contention, which would apply to all cases where import statistics are used, the Department would have to accept that all import statistics are flawed. However, the long line of cases in which the Department has used import statistics in general, and Indian import statistics in particular, shows that the court-approved Department practice stands in direct opposition to Respondents' conception.

The Department also disagrees with Respondents' assertion that the presence of Australian exports of coking coal in Indian import statistics significantly skews the surrogate value for coking coal because Australia is an advanced industrial country at a higher level of development than the PRC. The Department does not find that the import values for coking coal are distorted by the presence of Australian coal. In fact, according to the Indian import statistics, imports of coking coal from the PRC have a higher unit price than imports of coking coal from Australia. See Monthly Statistics of the Foreign Trade of India. Whereas the PRC's average unit price for its imports of coking coal into India is $50.39, Australia's average unit price is $45.64. As indicated above, the import values represent prices in the country of importation rather than exportation. We agree with Petitioners that import prices reflect prices charged for imports into India, the importing country, and not the prices charged in the country of origin. Because the Department has a reliable surrogate value, import data from the Department's primary surrogate country India, and because it is the Department's preference to value surrogate values using a single surrogate country whenever possible, the Department need not look to another surrogate country to obtain a surrogate value. See Luoyang Bearing Factory v. United States, 240 F.Supp.2d 1268, 1273 (CIT 2002) (noting that the Department resorts to data from a second or third surrogate country only when suitable data from the primary surrogate country cannot be found).

Moreover, the Department rejects Respondents' alternative source of surrogate values. Prices of coking coal from the Indian producer, Bharat Coking Coal, are not an appropriate source of surrogate value because the coking coal value is based on one Indian producer's prices and not on a broad market average as the Department prefers. See CTL Plate from PRC, 62 FR at 61981. Moreover, there is no indication that the surrogate values provided by Bharat Coking Coal are on a

tax-exclusive basis. See Shandong, 159 F.Supp.2d at 725. Additionally, Respondents acknowledged that values from Bharat Coking Coal are not for the same quality of coking coal as that used by Chinese producers. See Respondents' May 1, 2001, Letter, at 6.

The Department also rejects Respondents' data from Coal Week International as a potential surrogate value for coking coal because the values in Respondent's basket of countries do not represent a broad market average of coking coal values. Rather, the values are merely the average of two spot price quotes from unidentified companies in a basket of hand-selected countries. Moreover, the data for coking coal in Respondents's basket of countries is not as robust, and no more likely to be better defined or less biased, as the Indian import statistics.

5. The Coal Week International Prices Are Not Solely From the Primary Surrogate Country.

As stated, the Department's preference is to use surrogate values solely from the primary surrogate country. See Silicomanganse from the PRC, 65 FR 31514 and accompanying Issues and Decision Memorandum, at Comment 2. The use of Indian import statistics is consistent with this preference.

In contrast, the Respondents' proposal is not from India, the primary surrogate country. Rather, the Respondents' proposal contains coal prices from a basket of countries, some of which are not at a level of economic development comparable to China. Therefore, the Respondents' proposal is not consistent with the Respondents' preference.

C. Conclusion.

Based on the foregoing reasons, the Department finds that its use of Indian import statistics to calculate its surrogate value is reasonable because the data is from the Department's primary surrogate country for the PRC, is publicly available, sufficiently contemporaneous, specific to the input in question, and sufficiently reliable.

Comment 2: Washed Coal Inputs

Respondents' Argument: Respondents argue that the Departments' conclusion that Respondents' coal usage that was reported subsequent to washing was found to be erroneous by the Court and is contradicted by clear record evidence. Respondents explain that in the Draft Results the Department repeated its earlier conclusions that were found to erroneous by the Court. Respondents state that the Court remanded this issue to the Department with the following instructions: "Accordingly, since Respondents' questionnaire responses do not support Commerce's final determination on coal inputs, a remand is necessary so that Commerce may either make an adjustment reflecting Respondents' use of unwashed coal, or provide a reasonable explanation and substantial evidence for its finding on washed coal inputs." See CITIC Trading Co., Slip Op. 03-23, at 21. Additionally, Respondents note that the heading of the section was entitled "Only Defendent-Intervenors Now Contends that Coal Inputs Were for Washed Coal." See id at 17. Furthermore, Respondents explain that the Court stated, "The questionnaire responses that producers submitted during the investigation demonstrate that the producers washed the coal themselves and recycled the by-product of this process as additional coal input." See id at 19-20.

Additionally, Respondents argue that the Department's conclusion that the coal usage was reported subsequent to coal washing based on the Beizhang Verification Report is in error. See Memorandum from Alex Villanueva, Import Compliance Specialist, to James C. Doyle, Program Manager for the Verification of the Response of Wenshui County Beizhang Xianghe Coking Co., Ltd, ("Beizhang") with Regard to the Production of Foundry Coke, at page 7 (May 24, 2001) ("Beizhang Verification Report"). Respondents state that Exhibit 11 of the Beizhang Verification Report show facts that contradict the Department's conclusion. Respondents explain that Exhibit 11 shows that the beginning inventory plus purchases equals consumption and ending inventory, which the Department verified. Respondents state that since the inventory data and the purchase data represent unwashed coal, the consumption figures also must represent unwashed coal to make the equation balance. Thus, Respondents argue that the quantity consumed is the quantity of unwashed coal consumed. Respondents note that the Department correctly pointed out that this amount of coal from the verification exhibit was the same amount listed on Beizhang's January 16, 2001, Section D questionnaire response, at Exhibit 4, as the amount consumed. Respondents also note that the Department is correct that all of the other producers used the same methodology to report coal consumption. Thus, Respondents argue that since the Department's conclusion with regard to Beizhang is in error, so are its conclusions with regard to the other producers.

Thus, Respondents argue that based on the clear record evidence indicating Respondents' coal usage was reported prior to washing and the Court's instructions, the Department should make an

appropriate adjustment for coal washing.[16]

Petitioners' Argument: Petitioners note that petitioners did not affirmatively assert that losses as high as 40 to 50 percent occurred in the coal washing process. Petitioners clarify that this assertion was made by U-Met of PA, Inc.

Petitioners argue that Respondents never claimed that the Department improperly determined that Respondents used washed coal instead of unwashed coal during the investigation. Petitioners note that the issue was briefed exclusively by U-Met of PA, Inc. Petitioners contend that Respondents have attempted to construct a position from documents which are at best ambiguous. Petitioners argue that an evaluation of the record as a whole confirms that Respondents reported their usage based on washed coal. Petitioners explain that comparisons of usage amounts for coking coal reported by Respondents to the usage amounts for coking coal reported by a domestic producer reported in the Petition, show that the Department's conclusion that Respondents reported washed coal is reasonable. Petitioners contend that the data also demonstrate that Respondents' contrary conclusion is unreasonable.

Petitioners explain that during the investigation, an importer, U-Met of PA, Inc., argued that the Department used the wrong multiplier for the amount of coal needed to produce a metric ton of coke. See U-Met Case Brief, at 3-4. Petitioners state that U-Met contended that unlike in other countries, Chinese coke producers purchased unwashed coal rather than washed coal, with subsequent losses as

[16] Respondents state that an appropriate adjustment for unwashed to washed coal is to use the figure that the domestic industry states, and which the Department has accepted as accurate.

high as 40 to 50 percent as impurities in the coal are washed away. See id. Petitioners argue that the usage amount reported by a domestic producer of subject merchandise in the Petition clearly demonstrates that Chinese producers reported washed coal input amounts. Petitioners explain that the domestic producer's coal amount is washed because coking coal in countries other than the PRC, including the United States, is sold already washed. Petitioners note the similarity of certain Chinese producer's coking coal usage amount to the domestic producer's usage amount. Petitioners also argue that the Court permitted the Department to base its determination on the data in the entire record. See CITIC Trading Co., Slip Op. 03-23, at 20-21.

Department's Position: The Department agrees with petitioners that the Court's decision permitted the Department to offer a reasoned explanation supported by substantial evidence for its finding on washed coal. See CITIC Trading Co., Slip Op. 03-23, at 21. As discussed in the Draft Results, we found substantial evidence in the record that Respondents' reported coal usage amounts represents washed coal and was therefore properly valued in the Department's normal value calculation. We disagree with Respondents that the Court found the Departments' conclusion that Respondents' coal usage was reported subsequent to washing was erroneous. As the Respondents acknowledge, the Court stated that "Commerce may either make an adjustment reflecting Respondents' use of unwashed coal, *or provide a reasonable explanation and substantial evidence for its finding on washed coal inputs.*" See CITIC Trading Co., Slip Op. 03-23, at 21 (emphasis added). We have provided a reasonable explanation and substantial evidence that Respondents have reported their coal usage subsequent to washing. In the Draft Results, the Department noted that while the Decision Memo did

not clearly articulate the bases of our determination that Respondents reported coal subsequent to washing, the Department's conclusion was based on substantial evidence obtained during the verification of the foreign producers.

Moreover, the Department's conclusion that Respondents reported their coal usage subsequent to coal washing is based on not just the record evidence for Beizhang but also for Taiyuan Genyang ("TG"). Respondents have not challenged the Department's finding that TG reported its coal usage subsequent to the coal washing stage. We determined that TG reported its usage of coal based on washed coal because TG subtracted an amount of coal mud from its consumption, and coal mud is a byproduct of the coal washing stage.[17] See Memorandum from Alex Villanueva, Import Compliance Specialist, to James C. Doyle, Program Manager for the Verification of the Response of Taiyuan Genyang Industrial Company, Ltd. ("TG") with Regard to the Production of Foundry Coke, Exhibit TG-5 (May 24, 2001) ("TG Verification Report").

Furthermore, we disagree with Respondents that we were incorrect in finding that Beizhang reported its coal usage subsequent to coal washing. Our finding is based on record evidence, namely the Beizhang Verification Report. We verified Beizhang's reported coal input and noted:

> Beizhang presented a worksheet detailing the total amount of coal used during FY 2000. See Exhibit B-11. Beizhang purchased a total of {some coal} and consumed a total of {some coal}. Beizhang officials stated that a total of {some coal} is lost during the coal washing or coke making process.

[17] According to TG's January 16, 2001, Section D questionnaire response, TG's reported usage amount of coal for June is equal to the sum of all quantities of coal withdrawn from inventory for June after deducting the quantity of coal mud withdrawn from inventory for June. See TG's January 16, 2001, Section D questionnaire response, at Exhibit 4.

Beizhang Verification Report, at 7. The specific amount of coal lost during the coal washing or coke making process cited in the Beizhang Verification Report is equal to the difference between the amount of coal purchased and the amount of coal consumed cited in the Beizhang Verification Report. Similarly, we verified Beizhang's igniting coal input and noted:

> Beizhang submitted a worksheet detailing the total amount of igniting coal used during FY 2000. See Exhibit B-13. Beizhang purchased a total of {some igniting coal} and consumed a total of {some igniting coal}. Beizhang officials stated that a total of {some igniting coal} is lost during the coal transport from the coals coal inventory to the ovens as well as coal lost during the igniting process.

Beizhang Verification Report, at 7. The specific amount of igniting coal lost during the coal transport from the coal inventory to the ovens as well as coal lost during the igniting process cited in the Beizhang Verification Report is equal to the difference between the amount of igniting coal purchased and the amount of igniting coal consumed cited in the Beizhang Verification Report. Similarly, we verified Beizhang's paper input and noted:

> Beizhang submitted a worksheet detailing the total amount of paper used during FY 2000. See Exhibit B-12. Beizhang purchased a total of {some paper}and consumed a total of {some paper}. Beizhang officials stated that a total of {some paper}is lost because the storage area for the paper sometimes gets wet when it rains and is unusable at that point.

Beizhang Verification Report, at 6. The specific amount of paper lost in the storage area cited in the Beizhang Verification Report is equal to the difference between the amount of paper purchased and the amount of paper consumed cited in the Beizhang Verification Report.

Thus, while Respondents argue that the Department was inaccurate in noting that the difference between the amount of coal purchased and the amount of coal consumed is the same quantity of coal lost during the coal washing or coal making process, it is supported by record evidence. In fact it is a

direct statement of company officials and verified by the Department. The Department observed for three of Beizhang's inputs that the difference between the quantity purchased and the quantity consumed is equal to the quantity lost. See Beizhang Verification Report, at 6-7. Additionally, we note that there is no other indication on the record where the washing process takes place.

Thus, we continue to find that both TG and Beizhang reported their coal usage subsequent to coal washing. Since all the producers used the same methodology to report coal consumption, which Respondents do not dispute but rather agree with, it is reasonable to assume that all producers reported coal subsequent to washing and thus no adjustment is necessary.

Comment 3: Non-cooperation of Producers Shut-down

Respondents' Argument: Respondents argue that the Department failed to adhere to the Court's instructions to include Respondents' list submission in the record and use non-adverse facts available for determining the normal values of non-responding producers. See CITIC Trading Co., Slip Op. 03-23 at 21. Instead, Respondents argue, the Department did not apply non-adverse facts available to several producers, and this is incorrect because it does not comply with the Court's order and because it is unwarranted by the record.

Moreover, Respondents argue that the Court found that Respondents acted to the best of their ability in providing the Department with information about non-responding producers' shutdowns. See CITIC Trading Co., Slip Op. 03-23 at 26. Respondents claim that the Department had ample opportunity to explain how Respondents failed to act to the best of their ability, if there were substantial

evidence to support its determination. However, Respondents state that because the Department did not do so, the Court's decision is now the law and that the Department may not re-litigate that issue.

Respondents additionally state that because a massive shut-down of foundry coke producers in the PRC occurred, Sinochem could not provide Section D responses for its producers or provide documentation corroborating the producers shut-down. Respondents argue that the Department's finding that Sinochem did not cooperate by acting to the best of its ability to provide this information is speculative.

Respondents argue that if Sinochem's failure to inform the Department that it would not be able to provide Section D responses was a serious reason for using adverse facts available against Sinochem, the Department should have raised it earlier. Moreover, Respondents argue that Sinochem did not inform the Department about the non-cooperation of its producers because Sinochem was attempting to persuade its producers to cooperate. Respondents argue that the timing of when Sinochem notified the Department that its producers would be non-responsive has nothing to do with whether Sinochem acted to the best of its ability.

Respondents argue that Sinochem supplied all statements available to it regarding the shut-downs and persuaded one shut-down supplier to cooperate, and this effort is no reason to punish Sinochem by using adverse facts available.

Respondents state that the Department had not previously based, or mentioned to the Court, its decision to use adverse facts available due to the failure of Sinochem to supply the telephone, fax numbers, and addresses for its suppliers. Respondents state that the Department's reliance on such an argument now is surprising. Respondents state that Sinochem did not supply the telephone, fax and

address information because Sinochem purchased from intermediate trading companies and not directly from the producers. Respondents therefore repeat that Sinochem did not have their exact addresses or fax numbers. Moreover, Respondents state that when Sinochem officials visited the companies in an attempt to obtain cooperation, Sinochem forgot to subsequently send the Department the addresses after the visit.

Furthermore, Respondents suggest that the Department misunderstood the reason that the Conclusion Report was offered. Respondents state that the purpose of the list was not to list all shut-down suppliers, but was offered to establish the credibility of the statements made regarding the shut-down plants. They state that the list from only Qingxu County is the only such report that exists to the best of their knowledge and argue that this fact does not give the Department the right to use adverse inferences.

Finally, Respondents argue that Sinochem does not have the ability to force unrelated suppliers to cooperate with the Department, and therefore there is no basis for the application of adverse facts available with regard to any supplier of Sinochem.

*Petitioners' Argument*s: Petitioners disagree with Respondents that the Court has precluded use of adverse facts available. Rather, Petitioners state that when the Department does not explain its determination, the Department must nonetheless be given an opportunity to review the record to support its finding. Petitioners, moreover, state that Respondents are wrong to state that the Department cannot address matters in its Draft Results that it had not raised in the Final Determination.

Finally, Petitioners agree that the Department's application of adverse facts available is appropriate for certain suppliers where no documentation exists to corroborate their shutdown.

Department's Position: The Department agrees with Respondents that the Court stated, "{A} remand is necessary so that {the Department} may include Respondents' list submission in the record and use non-adverse facts available for determining the normal values of non-responding producers." See CITIC Trading Co., Slip Op. 03-23 at 28. However, the Department interprets the Court's statement to be based on the assumption that the Conclusion Report would show all non-responding companies were shut-down due to new environmental regulations in the PRC.[18] Since the Conclusion Report did not identify all of Sinochem's non-responsive suppliers, the Department continued to use adverse facts available with respect to only those suppliers for which the Department had no evidence of their shut-down. Pursuant to the Court's instruction, the Department did not apply adverse facts to suppliers of Sinochem and CITIC who did submit letters certifying their shut-down or suppliers that were listed in the Conclusion Report.

The fact that the Department applied non-adverse facts available to those suppliers that provided letters confirming their shut-down demonstrates the Department's willingness to recalculate the normal values for certain suppliers and, significantly, to rely on other evidence of shut-down in addition to the Conclusion Report. However, the Department applied adverse facts available to certain suppliers of Sinochem specifically because Sinochem provided no evidence of the shut-down of its

[18] The Department also notes that because the Conclusion Report was not submitted prior to verification, there was no opportunity for comment by the parties, or for the Department to thoroughly review the report and formulate questions.

remaining suppliers, did not provide the contact information for those suppliers, nor any other evidence to demonstrate their efforts to contact certain non-responsive suppliers.

Contrary to Respondents' assertion, the Department is not re-litigating the issue of whether Sinochem acted to the best of its ability in providing evidence to substantiate its producers' shut-down. The Draft Results merely articulate why the Department found that there was no evidence demonstrating that Sinochem acted to the best of its ability to provide information about the non-responsiveness of certain suppliers.

The Department's determination that Sinochem failed to cooperate to the best of its ability is not unilaterally based on Sinochem's failure to submit Section D responses from it non-responsive suppliers, but is based on a culmination of evidence that shows that Sinochem failed to provide the Department with any evidence of the suppliers' shut-down, or of Sinochem's attempts to contact its suppliers in an effort to persuade them to cooperate.

The Department finds that if Sincohem were concerned with the non-cooperation of its producers, it would have been reasonable for Sinochem to have informed the Department of its difficulty in a timely manner, and not three months after the Department requested such information it its original November 7, 2000, Sections A, C, and D questionnaires. The Department also finds that it is highly improbable that Sinochem would claim that it did not have its suppliers' addresses, but then have the addresses in order to visit the suppliers. Moreover, it seems implausible that despite numerous requests by the Department, Sinochem happened to forget to supply the Department with that information. In fact, Sinochem's own response to the Draft Results attests to an intentional delay in informing the Department that several suppliers may not submit information, as well as admitting to

forgetting to forward information which could have permitted the Department to contact the suppliers; neither of which exhibit acting to the best of its ability.

The Department disagrees with Respondents that Sinochem is being punished for submitting a statement from its shut-down supplier. On the contrary, the fact that the Department voluntarily accepted the letters, and applied non-adverse inferences based on the submission of letters, demonstrates the Department's willingness to accept any evidence about these shut-down suppliers. See January 26, 2001, supplemental questionnaire (where the Department requested any documentation corroborating producer shut-downs); see also November 7, 2000, questionnaire, December 20, 2000, supplemental questionnaire, and January 26, 2001, questionnaire (where Department requested telephone, fax, and address information).

Finally, the record shows that there is no evidence to demonstrate the shut-down of the non-responsive producers, no contact information that would enable the Department to conduct its own inquiry as to their shut-down, and no evidence to show that Sinochem made diligent effort to procure their cooperation. Even if these shut-down producers are unrelated, there is no evidence to show that Sinochem even attempted to urge their cooperation other than claims that it was working diligently, and then, failing to provide the information. The Department acknowledges that Respondents' submission of the Conclusion Report and letters from shut-down suppliers does demonstrate that Sinochem attempted to provide evidence for certain shut-down suppliers. However, the Department cannot simply assume that such evidence, which is relevant to only certain specific suppliers, demonstrates by inference that Sinochem attempted to contact its remaining suppliers. Therefore, the Department finds

that without such evidence, it is appropriate to continue to conclude that Respondents failed to act to the best of their ability in providing information about certain allegedly shut-down suppliers.

Comment 4: Related Coal Mines

Respondents' Argument: Respondents argue that the Department based its decision not to use the factors of production from related coal mines on completely different reasons from those it used in the Final Determination. Respondents explain that the Department cited two decisions, Polyvinyl Alcohol from the PRC, and Ferrovanadium from PRC, which were subsequent to the Final Determination for this case.[19] Respondents argue that the Department's statement that it would not use factors of production from a joint venture "because it is a separate legal entity," does not appear to be logical or based on the law. Rather, Respondents contend that the fact that an entity is legally distinct should not affect the Department's decision to use the most accurate calculation possible. Respondents argue that greater accuracy would be gained by using the actual inputs that go into mining coal in correlation with the Coal India Ltd. ("Coal India") financial ratios on the record. Respondents contend that the fact that there are no surrogate financial ratios on the record for an integrated foundry coke producer in India is not relevant. While Respondents note that using the Coal India financial ratios to build up a cost for coal would tend to overstate and double-count the financial costs compared to an integrated producer,

[19] See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Polyvinyl Alcohol From the People's Republic of China, 68 FR 13674, 13679 (March 20, 2003) ("Polyvinyl Alcohol from the PRC"); and Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Ferrovanadium from the People's Republic of China, 67 FR 45088, 45092 (July 8, 2002).

Respondents argue that using the actual Chinese inputs would be more accurate than using the prices from a surrogate country.

Petitioners' Argument: Petitioners argue that the Draft Results provide two independent bases to support the Department's decision not to value the inputs that go into producing coal, which is the primary input used in producing the subject merchandise. First, petitioners explain that the Department's decision not to consider production of inputs by a company 10 percent owned by the Respondent was reasonable and explained. Second, petitioners argue that the Department's approach to valuing inputs is clearly reasonable and in accord with both the statute and case law, including cases prior to the Final Determination. Petitioners explain that in addition to the precedents cited by the Department in the Draft Results, in Pacific Giant, the Department's application of surrogate values to value well water consumed in the production of crawfish meat was upheld by the Court because the Court stated that:

> The statute plainly focuses upon the quantity of inputs for factors of production rather than the costs associated with them. It states that "the factor of production utilized in producing merchandise, include, but are not limited to …(B) quantities or raw materials employed {and} (C) amounts of energy and other utilities consumed….

Pacific Giant, Inc. v. United States, 223 F.Supp.2d 1336, 1346 (CIT 2002) (quoting 19 U.S.C. § 1677b(c)(3)) ("Pacific Giant"). Petitioners explain that in Pacific Giant, Respondents contended that the Department improperly assigned a surrogate value to the well water because some crawfish tail meat producers did not incur a cost for the water pumped from their wells, and that the Department should instead have used only the value of the electricity used to pump the water from the wells.

Petitioners state that the Department argued that its determination to value the water consumed in production was consistent with its practice in NME investigations, and it was "irrelevant that crawfish processors did not incur a cost for the water because in constructing normal value in a non-market economy, the statute requires Commerce to base its factors of production upon quantities of inputs rather than the costs associated with them." 223 F.Supp.2d, at 1346. Thus, petitioners explain that the Court found that water "constitutes a factor of production" because "its use {was} for more than incidental purposes." Id. Petitioners argue that the Department's decision to base the required valuation on the inputs that go into producing the subject merchandise is fully supported by the facts, the statute, and the case law.

Department's Position: We agree with petitioners that we have provided two independent bases supporting the Department's decision not to value the inputs that go into producing coal. We noted in the Draft Results that it is the Department's practice only to value the factors of self-produced inputs for the producer of the subject merchandise, not inputs produced by a separate entity, which is also reflected in Polyvinyl Alcohol from the PRC. We disagree with Respondents that we based our decision to continue to use a surrogate value for coal on completely different reasons. We stated in the Final Determination that we did not consider coal to be a self-produced input for any of the Respondents because none of the mines are members of any of the Respondents' group. We requested a remand "to allow Commerce to fully consider the issue of whether applying a factors of production methodology to the coal produced by the purportedly related coal mines is appropriate." See CITIC Trading Co., Slip Op. 03-23, at 31. Thus, we recognized that we failed to clearly

articulate our decision in the Final Determination and requested a remand so that we could provide a more clear rationale. We note, however, that the underlying policy consideration in the Final Determination and the Draft Results are the same: the statute directs the Department to value the factors of production used by the producer of the subject merchandise, not the factors of separate legal entities which manufacture inputs to the subject merchandise. While the Department has cited cases subsequent to the Final Determination, these decisions better articulated the Department's practice, and are therefore relevant to this case.

In this case, the coal supplier is a distinct legal entity and does not produce foundry coke, which Respondents have not contested. We disagree with Respondents that the fact that an entity is legally distinct should not affect the Department's search for the most accurate calculation possible. Taken to its extreme, this position would have the Department request factor usages for all inputs used to manufacture the subject merchandise in every case. The instant case, in which there are a large number of coke producers and mines supplying coal to these producers demonstrates the unworkability of such an exhaustive request. Moreover, Respondents have noted the problems of using Coal India's financial statements due to potentially overstating and double-counting the financial costs compared to an integrated producer of foundry coke. The Department also prefers to not "mix and match" financial ratios as this leads to less, not greater, accuracy when two wholly separate entities' data are merged together because companies may classify expenses differently. See Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review 64 FR 69494, 69500 (December 13, 1999) ("Persulfates from the PRC"). Thus, we disagree with Respondents that using

the Chinese inputs used to mine coal rather than a surrogate value for coal would be more accurate. In Frozen Fish Fillets from Vietnam, the Department further articulated its practice for valuing inputs:

> Our general policy, consistent with section 773(c)(1)(B) of the Act, is to value the factors of production that a respondent uses to produce the subject merchandise. If the NME Respondent is an integrated producer, we take into account the factors utilized in each stage of the production process. For example, in the case of preserved canned mushrooms produced by a fully integrated firm, the Department valued the factors used to grow the mushrooms, the factors used to further process and preserve the mushrooms, and any additional factors used to can and package the mushrooms, including any used to manufacture the cans (if produced in-house). If, on the other hand, the firm was not integrated, but simply a processor that bought fresh mushrooms to preserve and can, the Department valued the purchased mushrooms and not the factors used to grow them.[20] This policy has been applied to both agricultural and industrial products.[21] Accordingly, our standard NME questionnaire asks respondents to report the factors used in the various stages of production.

Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets From the Socialist Republic of Vietnam, 68 FR 4986, 4993 (January 31, 2003). In this case, the producers are not fully integrated but separate legal entities from the coal suppliers, thus we would value the purchased coal and not the factors used to mine it in accordance with our practice.

Furthermore, in Frozen Fish Fillets from Vietnam, the Department also noted that there are exceptions to valuing the self-produced inputs of integrated producers relevant to this case:

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[20] See Final Results Valuation Memorandum for Final Results of First New Shipper Review and First Antidumping Duty Administrative Review: Certain Preserved Mushrooms From the People's Republic of China, 66 FR 31204 (June 11, 2001) (Final Results Valuation Memorandum).

[21] See, e.g., Persulfates From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Notice of Partial Recission, 67 FR 50866 (August 6, 2002) (unchanged in final) and Notice of Final Determinations of Sales at Less Than Fair Value: Brake Drums and Brake Rotors From the People's Republic of China, 62 FR 9160 (February 28, 1997).

> First, in some cases a respondent may report factors used to produce an intermediate input that accounts for a small or insignificant share of total output. The Department recognizes that, in those cases, the increased accuracy in our overall calculations that would result from valuing (separately) each of those factors may be so small so as to not justify the burden of doing so. Therefore, in those situations, the Department would value the intermediate input directly.
>
> Second, in certain circumstances, it is clear that attempting to value the factors used in a production process yielding an intermediate product would lead to an inaccurate result because a significant element of cost would not be adequately accounted for in the overall factors buildup. For example, in a recent case, we addressed whether we should value the respondent's factors used in extracting iron ore--an input to its wire rod factory. The Department determined that, if it were to use those factors, it would not sufficiently account for the capital costs associated with the iron ore mining operation given that the surrogate used for valuing production overhead did not have mining operations. Therefore, because ignoring this important cost element would distort the calculation, the Department declined to value the inputs used in mining iron ore and valued the iron ore instead.[22]

Id. The Department used Gujarat NRE Coke Ltd. ("Gujarat"), an Indian producer of subject merchandise, to value the surrogate financial ratios. There is no indication on the record that Gujarat self-produces coal, and correspondingly, possesses, operates and maintains the capital plant required to produce it, and Respondents have not argued that Gujarat self-produces coal. Thus, Gujarat does not incur expenses related to the operation, maintenance, and depreciation of the capital plant required to produce coal. For this reason, this expense is not reflected in Gujarat's financial ratios used by the Department in the Final Determination. If the Department were to use Gujarat's financial ratios, while valuing the inputs which go into producing coal, this would result in an improper undervaluation of the

[22] See Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod From Ukraine, 67 FR 55785 (August 30, 2002); Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From the People's Republic of China, 66 FR 49632 (September 28, 2001); Final Determination of Sales at Less Than Fair Value; Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China, 62 FR 61964 (November 20, 1997); and Notice of Final Determination of Sales at Less Than Fair Value; Furfuryl Alcohol From the People's Republic of China, 60 FR 22544 (May 8, 1995).

input, and understatement of normal value. Thus, we disagree with Respondents that valuing the inputs which go into producing coal would result in a more accurate calculation.

Comment 5: Scope

Respondents' Argument: Respondents argue that the Department has found no need for a recalculation despite instruction from the court that its interpretation of the scope language presents a tautology. See CITIC Trading Co., Slip Op. 03-23, at 38. Furthermore, Respondents contend that the Department is now relying on an interpretation of the scope from the Scope Ruling on Foundry Coke: Shook and Dajin that was published far after the Final Determination. See Scope Ruling on Foundry Coke: Shook and Dajin. Respondents contend that the Scope Ruling on Foundry Coke: Shook and Dajin is not relevant because they allege that it does not address the contradictory treatment of different sales in the Final Determination.

Respondents argue that the Department is proposing a two-pronged test based on the Scope Ruling on Foundry Coke: Shook and Dajin, which was not applied in the Final Determination. Respondents contend that this two-pronged test was not discussed in the Final Determination, or the litigation before the Court. Thus, Respondents contend that had the Department applied the two-pronged test to the several sales that were indisputably "sold as" above 100 mm, it would have mentioned this fact in either the Final Determination or before the Court, since they argue that it is the Department's position that such a test is required.

Respondents also argue that the Department has selectively applied this test. Respondents explain that the Department was inconsistent in applying this new standard based on if the sale passed

the second prong of the test, that "the entire portion of the sale of foundry coke sold as over 100 mm qualifies as foundry coke with the scope of the order." See Draft Results, at 25-26. Respondents contend that for all other sales the Department applied a bright line test, and not the two-pronged test. Thus, Respondents argue that the Department is continuing its inconsistency about which the Court was concerned. Respondents also argue that the Department has changed its position from the Final Determination, without explanation. Respondents note that the assertion by the Department that its test represents an "industry standard" for determining size is unsupported by the record, and wholly at odds with the experience of their customers.

Furthermore, Respondents contend that the sale in question does not meet the two-pronged test. Respondents argue that the Department admits that "we do not know the specific amount contracted at or above 100 mm," and thus the first prong of the Department's test is not met because of the lack of information on whether any of the 75-125 mm range shipment was "sold as" above 100 mm. Respondents argue that the sale is outside of the scope of the case according to the two-pronged test because the Department would never reach the second prong.

Petitioners' Argument: Petitioners argue that the scope of this case has not changed. Petitioners explain that the precise scope of the antidumping duty order was reaffirmed and explained in a specific scope inquiry conducted by the Department at the request of Sinochem. Petitioners contend that the Draft Results fully explain the Department's reasonable actions in addressing shipment data for merchandise which straddled the size threshold. Petitioners argue that the Court required the Department to provide a reasoning for its decision-making, and the Department has now provided a full

explanation demonstrating that its action did conform to a consistent definition of the scope for this sale and that the Department has been consistent in its practice.

Department's Position: We agree with petitioners. As discussed in the Draft Results, we found that because a portion of Sinochem's straddling sale falls within the scope, the portion sold as 100 mm or larger is appropriately considered subject merchandise. We disagree with Respondents that a recalculation was necessary because the Court's finding that our interpretation of the scope language presents a tautology. We have more clearly articulated our interpretation of the scope and more adequately explained the "sold as" portion of the test to show that our treatment of Sinochem's straddling sale is consistent with our treatment of all of Respondents' sales. The very purpose of the sieve test is to ensure that there was not so much degradation that the sale can now no longer be properly classified as foundry coke, which is 100 mm and above. We note that for Respondents' other sales we were able to determine the amount sold as 100 mm and above from the sales contract, but for Sinochem's straddling sale, this information was not available, and therefore, we used the best information available, the amount tested at or above 100 mm. Furthermore, it is reasonable to assume that a portion of Sinochem's straddling sale was sold as 100 mm and above because the sale was contracted for a range exceeding 100 mm. The tests show that a portion was tested at or above 100 mm after shipment. Thus, a higher portion was likely sold as 100 mm and above, because, as Respondents have confirmed, foundry coke is a highly degradeable product, which Respondents have estimated averages 20-25 percent degradation per shipment. See ITC Final Determination. Although it is unknown what portion of Sinochem's straddling sale was sold as 100 mm or above, this fact is

irrelevant because the scope concerns whether at least 50 percent of the portion "sold as" 100 mm or above was retained on a 100 mm sieve.

We also disagree with Respondents that we are applying a new test based on the Scope Ruling on Foundry Coke: Shook and Dajin, which was not applied in the Final Determination. We have consistently used the same interpretation of the scope in the Final Determination and the Draft Results and we are not proposing a new two-pronged test. The "sold as" factor of the test was clearly identified in the Final Determination. We recognize, however, that the Department's previous explanations of the scope in the Final Determination did not remove all doubt as to the proper application of the scope. While we cited the Scope Ruling on Foundry Coke: Shook and Dajin which is subsequent to the Final Determination, the Scope Ruling on Foundry Coke: Shook and Dajin better clarified our interpretation of the scope when dealing with straddling sales, and is thus relevant to this case. The Department was not "relying" on the Scope Ruling on Foundry Coke: Shook and Dajin (i.e., as an authority), but was using the clear explanation of the proper application of the scope to shed light on this issue.

Moreover, we have not selectively applied this test. Respondents are fundamentally misstating the Department's analysis and treatment of individual sales with respect to the scope. First, we note that it is Respondents who controlled the sales data and its submission through the antidumping proceeding. The Department must therefore rely on the Respondents to review the scope and apply it to their sales database information. It is clear from the record of this proceeding that the Department and Respondents had very different understandings of the proper functioning of the scope. All of Respondents' sales of subject merchandise provided to the Department were 100 percent "sold as"

100 mm or above. We verified these sales and reviewed testing results included in the verification exhibits. We did not apply a bright line test to these sales as Respondents have alleged, but we note the result of applying our interpretation of the scope and Respondents' bright line test would produce exactly the same results for sales in which the entire sale was sold as 100 mm or above. Furthermore, the Draft Results explained that the Department treats sales sold as smaller than 100 mm as outside of the scope.

We further disagree that this test is not an industry standard. The ITC noted in its ITC Preliminary Determination, that foundry coke and blast furnace coke are distinguishable in "screening requirements". See Foundry Coke from China, USITC Pub. 3365, Inv. No. 731-TA-891 (Preliminary), at 5 (November 2000) ("ITC Preliminary Determination"). The ITC also noted that, "{u}nlike foundry coke, blast furnace coke does not require screening." See id. The screening requirement is in fact a necessary part of the sales process for foundry coke. Therefore, we will continue to value the portion of the Sinochem sale sold as 100 mm or above using the best information available, the test analysis report.

The Department is concerned about the proper application of the scope. It is the Department's concern that unless the scope is interpreted as described above, the scope language will present an open invitation to circumvention. All that a Respondent would have to do to evade the antidumping duty order would be to make a sale of coke in a size range which straddles the key 100 mm size. Then it would simply have to ensure that less than 50 percent of that sale was sized 100 mm and above, and it would therefore be able to evade the Department's order.

FINAL RESULTS OF REMAND

As a result of this remand, we have recalculated the company-specific margins for the Final Determination. The "PRC-Wide" rate for this review, 214.89, is not affected by these remand results. The recalculated company-specific weighted-average margin percentages are as follows:

Manufacturer/exporter	Weighted-average margin (percent)
Shanxi Dajin International (Group) Co. Ltd.	101.62
Sinochem International Co., Ltd	103.26
Minmetals Townlord Technology Co. Ltd.	75.58
CITIC Trading Company, Ltd.	47.62
PRC-Wide Rate	214.89

These final results pursuant to remand are being issued in accordance with the order of the CIT in CITIC Trading Co..

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Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

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Date